IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Jas Raj Vs. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL (W) NO.387/2005
against the order dated 23.5.2005 passed in
S.B. Civil Writ Petition No.166/99.

Date of judgment : 2nd May, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Ranjeet Joshi for the appellant.
Mr. L.R. Upadhyay, Dy. Government Advocate.

BY THE COURT: (PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the appellant.

It is rather unfortunate that the petitioner-appellant time and again to get a fair deal in the matter of promotions had to knock the doors of the Court. The facts which are undisputed and appear from the record are that the petitioner was appointed as a Constable under the Rajasthan Police Subordinate Service Rules,

1973. The persons junior to him as Constable were promoted in 1984 but the petitioner's case was not considered. Then he approached this Court by way of filing writ petition which was allowed with direction to consider his case for appointment on the post of Head Constable with effect from the date the persons junior to him were considered and appointed as Head Constable with all consequential benefits therefrom.

While giving effect to the said order, the petitioner was given promotion as Head Constable by reviewing his result vide order dated 25.1.1997 w.e.f. 1st March, 1984 by including his name in select list. However, on that basis, the petitioner's case was not further considered for promotion to the post of Assistant Sub-Inspector from the post of Head Constable as on the date persons appointed as Head Constable along with the petitioners and were junior to the petitioner were considered. The persons junior to the petitioner were allegedly considered and appointed as Assistant Sub-Inspector in the year 1994, the petitioner filed another writ petition No.4041/1997 which came to be

disposed of on 28.4.1998 with the following directions:-

> "The writ petition is disposed of with the directions that after the petitioner's successfully completing the training of ASI, if he succeeds in the qualifying examination for the post of SI, to be held within a period of three months, he shall be sent for training of SI. The petitioner shall be entitled to the benefit of both the promotions from the date junior to him were given promotion."

In the said writ petition, it was stated by the respondents that the petitioner has been sent for training of ASI after having been selected in the examination and if he completes successful his training, he shall be considered for the post of SI with all consequential benefits. The relevant observations of the Court in the order dated 28.4.1998 reads as under:-

> "4. In the reply filed by the respondents, it has been averred that in the order Ex.P/4 dated 25.1.97 it has ben made clear that the petitioner shall be entitled to all consequential benefits and in pursuance of

this order the petitioner has already been sent for training of ASI and as and when he completes his training, examination for the post of SI will be conducted and if he clears that examination, he will be sent for training for the post of SI.

5. It is evident from the order Annex.R/1 that Part of the relief claimed in the writ petition has been accorded to the petitioner. The facts stated in the reply further indicate that the respondents have got no objection in giving the petitioner further promotion to the POST of S.I. in case he succeeds in the examination. That being so, controversy does not survive.

6. The writ petition is disposed of with the directions that after the petitioner's successfully completing the training of ASI, if he succeeds in the qualifying examination for the post of SI, to be held within a period of three months, he shall be sent for training of SI. The petitioner shall be entitled to the benefit of both the promotions from the dates juniors to him were given promotion. Leaned counsel for the petitioner states that his client will not claim salary for the period but notional fixation should be done from the

dates his juniors were fixed in the scale of the promoted posts."

In pursuance of the aforesaid order, the petitioner was given appointment on the post of ASI vide order dated 31st March, 1998 and thereafter he was allowed to take examination for the post of Sub-Inspector which is a promotional post from the post of ASI on 18.11.1998.

In the written test of the said examination, the petitioner secured requisite marks and he cleared the test. However, when he was declared passed in the written test vide communication dated 31.12.1998, but he did not find his name in the select list, he filed the writ petition No.166/1999 seeking relief for being promoted to the post of SI. The selection process for promotion to the post of SI from ASI consists of three parts, written test, outdoor test and interview. The petitioner in his writ petition has averred that he has cleared the written test vide communication dated 31.12.1998. On 7.1.1999, he has also cleared outdoor

test. He was called for interview on 8.1.1999 and subsequently following statement was made by the petitioner in his writ petition:-

> "The petitioner also successfully completed this test and thereafter on 8.1.1999 the petitioner was required to appear before the Interview Board. In interview Board, there were three Members i.e. the Inspector General of Police, Rajasthan; Dy. Inspector General of Police, C.I.D. (C.B.), Jaipur and Superintendent of Police (Vigilance), Jaipur. In Interview, no question was asked on merit, but two enquiries were made from the petitioner as to how the petitioner can be given promotion every year because as per their record, petitioner was given promotion on the post of Head Constable vide order dated 25.1.1997. There-after the petitioner was again given promotion on the post of Assistant Sub-Inspector, vide order dated 31.3.1998 and now he has sought promotion for the post of Sub-Inspector in the year 1999. It was further asked as to how the Head Constable is given the order again and again. Then the petitioner made it clear that he was entitled for promotion in the year 1984 on the post of Head Constable, but he was not given promotion and in such circumstances the petitioner filed writ petition and in that context, the matter was again examined and it was found that the Department committed mistake in the year 1984 and hence all these promotions are consequential and on account of mistake committed by the Department, the petitioner has been put to severe losses because he has been given promotion at very late stage."

These averments made in the writ petition have not been denied by the respondents in the detailed reply filed by them. The only defence taken by the respondents in the reply was that the petitioner has not secured required minimum marks in process of selection. The total marks required for making grade to the selection was 175 whereas the petitioner has secured only 170 and half marks less than 50% in aggregate. The division of marks at every stage was placed before the learned Single Judge which find place in the order under appeal.

The marks revealed that the petitioner has been given zero marks for reward out of 15. Relying on the result sheet, the learned Single Judge has dismissed the writ petition.

Be that as it may, since the petition was dismissed this appeal is before us. One of the grounds raised before us is that the petitioner could not have been given Zero marks against the rewards as he has

secured large number of rewards during his long tenure in service and by way of additional affidavit as per the requirement of the Court, the petitioner has placed as many as 20 documents showing the cash rewards as well as appreciation certificate from the year 1994 to 1997.

Faced with this situation, the respondents have submitted an additional affidavit that though the rewards were considered but no marks were allotted in terms of notification dated 25.7.1997 issued by the Government stating that only those rewards would be considered for the purpose of giving promotion which have been awarded to a person while working on the post from which promotion has been considered.

It is in the aforesaid backdrop, this appeal is being considered. Two things which are obvious from the chequered history of the case is that the petitioner has not been awarded promotion notwithstanding being eligible for the post physically as on the date on which it was due to him. Apparently, if he has been promoted on the post of Head Constable under the directions of the

Court in 1997 w.e.f. 1st March, 1984, it was physically impossible for him to have earned any reward on the post of Head Constable between 1.3.1984 until the date of promotion. Similarly if the petitioner is deemed to have been promoted on the post of ASI w.e.f. year 1994 when the person junior to him has been promoted in terms of the directions of the Court, it was impossible for him to earn any award on the post of ASI until he was actually promoted vide order dated 31st March, 1998.

So far as considering the petitioner's appointment on the post of Head Constable and ASI respectively with effect from the date persons junior to him have been promoted is governed by the directions of this Court and has become final and he was required to be considered for promotion to the post of Sub-Inspector only on that premise. Apparently, if the promotion is to be considered from the post of ASI by considering his appointment on the post of ASI accorded on 31st March, 1998, the petitioner would not have been eligible for consideration for the post of SI in terms of Rajasthan Civil Service (Police Subordinate Service) Rules,

1989, which requires the eligibility for promotion to the post of Sub-Inspector with minimum of two years as Assistant Sub-Inspector and one year continuous service. In the 1998 when the petitioner was called for interview for consideration on the post of Sub-Inspector in terms of directions issued by this Court vide its judgment dated 28th April, 1998 and writ petition No.4041/1997 could have only been allowed by considering him to be appointee of 1994 and not otherwise. Apparently, by executive instructions no such condition could be laid to be fulfilled by the candidates for being considered for the promotion which in given circumstances were impossible to be fulfilled. In the circumstances, in which the petitioner has been placed, giving effect to the circular dated 24.7.1997 would have put the petitioner in impossible situation in respect of 15 marks to be allotted for rewards.

Apparently, if the condition is to be given effect to that only those rewards are to be considered which have been earned on the feeder post, in case of the petitioner, who has been given promotion from the

lower post from which he has been considered for promotion as per directions of the Court with effect from the date persons junior to him have been promoted with all consequential benefits, this condition cannot be made applicable to him. Two possible ways to consider the matter are that either in the total aggregate marks for the purpose of computing 50% marks obtained by the petitioner, the 15 marks are not considered at all. If that is done, the petitioner succeeds inasmuch as if aggregate marks from which the aggregate marks are to be obtained is reduced by 15 which condition could not be applicable to the petitioner at all, he fulfills the criteria of securing 50% marks. If that criteria is made applicable in terms of rewards received by him before the date of consideration but since the date w.e.f. he was promoted to the feeder post, and which according to the respondents' admission that they have considered those rewards, then too zero marks could not have been given. Had the petitioner been given due promotion in 1984 as Head Constable, he would have worked as such and any awards received by him since 1984 until his promotion to ASI would be adjusted as award/reward earned by him

on the post of Head Constable likewise all awards earned by him since the date with effect from which he was promoted as ASI as award be considered as reward received as ASI for the purpose of considering marks to be awarded for rewards. In that event also the awards earned since 1984 which have not been considered earlier shall have to be considered for the purpose of awarding the promotion.

In either way, the petitioner's consideration has not been fair. Apparently, the averments made by the petitioner suggest that the respondents appear to have been carried away with the fact that the petitioner is receiving successive promotion within a short period on two posts, but that is the result of their own mistake which was committed in 1984.

Accordingly, this appeal is allowed. The judgment under appeal is set aside. The writ petition of the petitioner is allowed as a consequence and the respondents are directed to consider the case of the petitioner for promotion to the post of SI by reviewing

the marks to which the petitioner is entitled to in the light of aforesaid observations and pass appropriate order in terms of the direction issued by this Court in Writ Petition No.4041/1998 that is to say with effect from the date person junior to him was promoted as as SI as per selection which took place in 1998-99. No order as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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